

**THE WILMINGTON DISTRICT PROPOSED REGIONAL CONDITIONS FOR  
NATIONWIDE PERMITS**

I. Waters Excluded from the use of the NWP's or Subject to Additional Notification Requirements:

**(a) The Corps has identified waters that will be excluded from the use of all NWP's during certain timeframes. These waters are:**

- 1) Discharges into Waters of the United States designated by either the North Carolina Division of Marine Fisheries (NCDMF) or the North Carolina Wildlife Resources Commission (NCWRC) as anadromous fish spawning area are prohibited during the period between February 15 and June 30, without prior written approval from NCDMF or NCWRC and the Corps.
- 2) Discharges into Waters of the United States designated as sturgeon spawning areas are prohibited during the period between February 1 and June 30, without prior written approval from the National Marine Fisheries Service (NMFS).

**(b) The Corps has identified waters that will be subject to additional notification requirements for activities authorized by all NWP's. These waters are:**

- 1) Prior to the use of any NWP in any of the following North Carolina *designated waters*, applicants must comply with Nationwide Permit General Condition 27. The North Carolina *designated waters* that require additional notification requirements are **“Outstanding Resource Waters” (ORW)** and **“High Quality Waters” (HQW)** (as defined by the North Carolina Division of Water Quality), or **“Inland Primary Nursery Areas” (IPNA)** (as defined by the North Carolina Wildlife Resources Commission), or **contiguous wetlands** (as defined by the North Carolina Division of Water Quality), or **“Primary Nursery Areas” (PNA)** (as defined by the North Carolina Division of Marine Fisheries).
- 2) Applicants for any NWP in a designated **“Area of Environmental Concern” (AEC)** in the twenty (20) counties of Eastern North Carolina covered by the North Carolina Coastal Area Management Act (CAMA), must also obtain the required CAMA permit. Construction activities may not commence until a copy of the approved CAMA permit is furnished to the appropriate **Wilmington District Regulatory Field Office (Wilmington Field Office – P.O. Box 1890, Wilmington, NC 28402 or Washington Field Office – P.O. Box 1000, Washington, NC 27889)** for authorization to begin work.
- 3) Prior to the use of any NWP on a **barrier island** of North Carolina, applicants must comply with Nationwide Permit General Condition 27.
- 4) Prior to the use of any NWP in a **“Mountain or Piedmont Bog”** of North Carolina, applicants shall comply with Nationwide General Condition 27.

Note: The following wetland community types identified in the N.C. Natural Heritage Program document, "Classification of Natural communities of North Carolina (Michael P. Schafale and Alan S. Weakley, 1990), are subject to this regional condition.

Mountain Bogs

Swamp Forest-Bog Complex  
Swamp Forest-Bog Complex (Spruce Subtype)  
Southern Appalachian Bog (Northern Subtype)  
Southern Appalachian Bog (Southern Subtype)  
Southern Appalachian Fen

Piedmont Bogs

Upland depression Swamp Forest

5) Prior to use of any NWP for **construction of animal waste facilities** in waters of the US, including wetlands, applicants shall comply with Nationwide General Condition 27.

6) Prior to any discharge of dredge or fill material into streams or waterbodies within the twenty-five (25) designated trout counties of North Carolina, the applicant shall comply with Nationwide General Condition 27. The applicant shall provide a copy of the notification to the appropriate NCWRC office to facilitate coordination of any potential impacts to designated Trout Waters. Notification will include a letter of comments and recommendations from North Carolina Wildlife Resources Commission (NCWRC), the location of work, a delineation of wetlands, a discussion of alternatives to working in the mountain trout waters and why alternatives were not selected, and a plan to provide compensatory mitigation for all unavoidable adverse impacts to the mountain trout waters.

**NCWRC and NC Trout Counties**

Mr. Ron Linville  
Western Piedmont Region Coordinator  
3855 Idlewild Road  
Kernersville, NC 27284-9180  
Telephone: (336) 769-9453

Alleghany	Caldwell	Watauga
Ashe	Mitchell	Wilkes
Avery	Stokes	
Burke	Surry	

Mr. Dave McHenry  
Mountain Region Coordinator  
20830 Great Smoky Mtn. Expressway  
Waynesville, NC 28786  
Telephone: (828) 452-2546  
Fax: (828) 452-7772

Buncombe	Henderson	Polk
Cherokee	Jackson	Rutherford
Clay	Macon	Swain
Graham	Madison	Transylvania
Haywood	McDowell	Yancey

## **II. List of draft Corps Regional Modifications and Conditions for All Nationwide Permits**

1) NWP's may not be used for activities that may result in the loss or degradation of greater than 300 total linear feet of perennial stream or intermittent stream that exhibits important aquatic function(s). Loss of stream includes the linear feet of stream bed that is filled, excavated, or flooded by the proposed activity. [Note: The Corps uses the Stream Quality Assessment Worksheet, located with Permit Information on the Regulatory Program Web Site to aid in the determination of the intermittent channel stream status.]

2) Prior to use of any NWP (except 13, 27, 29 and 39), for any activity which impacts more than 150 total linear feet of perennial stream or intermittent stream, the applicant must comply with Nationwide Permit General Condition 27.

3) For all Nationwide Permits which allow the use of concrete as a building material, measures will be taken to prevent live or fresh concrete, including bags of uncured concrete, from coming into contact with waters of the state until the concrete has hardened.

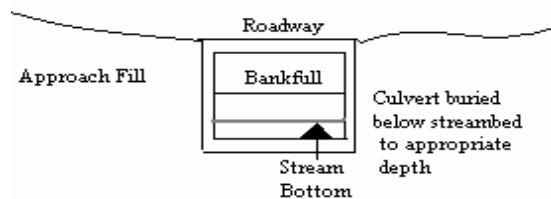
4) For all Nationwide Permits that allow for the use of riprap material for bank stabilization, filter cloth must be placed underneath the riprap as an additional requirement of its use in North Carolina waters. A waiver from the specifications in this Regional Condition may be requested in writing. The waiver will only be issued if it can be demonstrated that the impacts of complying with this Regional condition would result in more adverse impacts to the aquatic environment.

5) For all NWP's that involve the construction of culverts, measures will be included in the construction that will promote the safe passage of fish and other aquatic organisms. The dimension, pattern, and profile of the stream above and below a pipe or culvert should not be modified by widening the stream channel or by reducing the depth of the stream in connection with the construction activity

All culverts in the 20 CAMA coastal counties must be buried to a depth of one foot below, and at the same slope as, the bed of the stream or wetland.

For all other counties, culvert inverts will be buried at least one foot below the bed of the stream for culverts greater than 48 inches in diameter. For culverts 48 inches in diameter or less, culverts shall be placed directly on the stream bed or buried as practicable and appropriate to maintain aquatic passage, and every effort shall be made to maintain the existing channel slope.

A waiver from the specifications in this Regional Condition may be requested in writing.



The waiver will only be issued if it can be demonstrated that the impacts of complying with this Regional condition would result in more adverse impacts to the aquatic environment.

- 6) For any NWP that permanently impacts more than 150 linear feet of perennial and/or intermittent stream, the applicant shall provide a mitigation proposal to compensate for the loss of aquatic function associated with the proposed activity.
- 7) Applicants shall notify the NCDENR Shellfish Sanitation Section prior to dredging in or removing sediment from an area closed to shell fishing where the effluent may be released to an area open for shell fishing or swimming in order to avoid contamination of the disposal area and allow a temporary shellfish closure to be made. Any disposal of sand to the beach should occur between November 1 and April 30 when recreational usage is low. Only clean sand should be used and no dredged sand from closed shell fishing areas. If beach disposal was to occur at times other than stated above or if sand from a closed shell fishing area is to be used, a swim advisory shall be posted, and a press release shall be made.

### **III. Additional Regional Conditions Applicable to Specific Nationwide Permits**

#### **A. NWP #5 – Scientific Measurement Devices**

- 1) All weirs and flumes authorized by this NWP must be removed immediately upon completion of their intended use.
- 2) Weirs and flumes are not authorized by this NWP in areas designated by the North Carolina Division of Marine Fisheries (NCDMF) or the North Carolina Wildlife Resources Commission (NCWRC) as anadromous fish spawning areas, designated “Inland Primary Nursery Areas” or Public Trout Waters.

#### **B. NWP # 7 - Outfall Structures and Maintenance**

- 1) The applicant must employ the best available means when using any associated intake structure, including determining its site, design, and technology (e.g., screening) in order to minimize entrainment or impingement of fish and other aquatic life.

#### **C. NWP #12 - Utility Line Activities**

- 1) Pipeline/utility line construction through jurisdictional waters and wetlands will be accomplished utilizing directional drilling/boring methods to the maximum extent practicable.
- 2) Temporary discharge of excavated or fill material into wetlands and waters of the United States will be for the absolute minimum period of time necessary to accomplish the work. Temporary discharges will be fully contained with appropriate erosion control or containment methods or otherwise such fills will consist of non-erodible materials.
- 3) The areas of waters of the United States to be disturbed will be limited to the minimum

necessary to install the utility line. The work area authorized by this permit, including permanent fills, will be minimized to the greatest extent practicable. Justification for work corridors exceeding forty (40) feet in width is required and will be based on pipeline diameter and length, size of equipment required to construct the utility line, and other construction information deemed necessary to support the request. The applicant is required to provide this information to the Corps with the initial notification package.

4) In areas where a sub-aqueous utility line is to cross a Federally maintained channel, (i.e., the Atlantic Intracoastal Waterway [AIWW]), the line will be buried at least six (6) feet below the depth of the authorized channel. For areas outside Federally-maintained channels, sub-aqueous lines must be installed at a minimum depth of two (2) feet below the substrate when such lines might interfere with navigation.

6) The minimum clearance for aerial communication lines, or any lines not transmitting electrical power, will be ten (10) feet above the clearance required for nearby stationary bridges as established by the U.S. Coast Guard. In the event the U.S. Coast Guard has not established a bridge clearance, minimum vertical clearances for power and aerial lines will not be less than required by Section 23, Rule 232, of the latest revision of the National Electrical Safety Code (ANSI C2). Clearances will not be less than shown in Table 232-1, Item 7, ANSI C2.

7) The clearance for an aerial line is based on the low point of the line under conditions that produce the greatest sag, taking into consideration temperature, load, wind, length or span and the type of supports. The minimum clearance for an aerial electrical power transmission line shall be governed by the system voltage, as indicated below:

Nominal System Voltage, kilovolt	Minimum Clearance <u>Above Bridge Clearance</u> (As Established by the U.S. Coast Guard)
115 and below	20 feet
138	22
161	24
230	26
350	30
500	35
700	42
750 to 765	45

8) A plan to restore and re-vegetate wetland areas cleared for construction must be submitted with the required pre-construction notification (PCN). Cleared wetland areas shall be re-vegetated to the maximum extent practicable with native species of canopy, shrub, and herbaceous species. Fescue grass shall not be used.

9) For the purposes of this NWP, any permanently maintained corridor along the utility ROW shall be considered a permanent impact and a compensatory mitigation plan will be required for all such impacts associated with the requested activity.

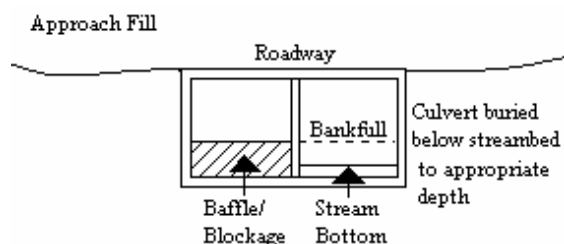
10) Use of rip-rap or any other engineered structures to stabilize a stream bed should be avoided to the maximum extent possible.

#### D. NWP # 13 – Bank Stabilization

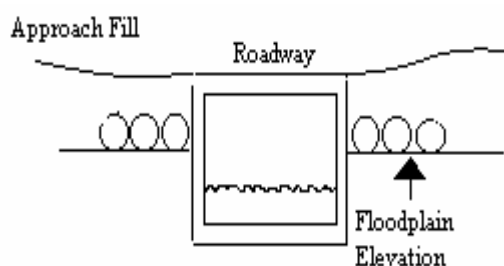
- 1) Unanchored trees, treetops, or debris may not be used as stream bank stabilization material.
- 2) Properly anchored and cabled structural stabilization techniques, such as timber crib structures, revetments, and root wads, are acceptable materials to stabilize stream banks.

#### E. NWP #14 - Linear Transportation Crossings

- 1) Applicants shall employ natural channel design to the maximum extent practicable for stream relocations. In the event it is not practicable to employ natural channel design, any stream relocation shall be considered a permanent impact and the applicant shall provide a mitigation plan to compensate for the loss of aquatic function associated with the proposed activity.
- 2) Bank-full flows (or less) shall be accommodated through maintenance of the existing bank-full channel cross sectional area. Additional culverts at such crossings shall be allowed **only** to receive flows exceeding bank-full.



- 3) Where adjacent floodplain is available, flows exceeding bank-full should be accommodated by installing culverts at the floodplain elevation.



- 4) This nationwide permit only authorizes upland to upland crossings and cannot be used in combination with Nationwide Permit 18 to create a building lot within waters of the United States, including wetlands.
- 5) This NWP cannot be used for private projects located in tidal waters or tidal wetlands.

#### **F. NWP #18 – Minor Discharges**

1) This NWP may not be used in conjunction with NWP #14 to create high ground for road access using NWP #14.

#### **G. NWP #29-Residential Developments.**

1) Discharges in wetlands and in perennial streams for stormwater management facilities are prohibited under this NWP.

2) Single-family recreational facilities are not authorized by this NWP.

3) Discharges of dredged or fill material into waters of the US, including wetlands, within the mapped FEMA 100-year floodplain, and floodway below headwaters (i.e.  $\geq$  five cfs) resulting in permanent above-grade fills are not authorized by this nationwide permit.

4) Discharges of dredged or fill material into waters of the US, including wetlands, within the floodway, above headwaters (i.e.  $<$  five cfs) resulting in permanent above-grade fills are not authorized by this nationwide permit.

5) Discharges of dredged or fill material into waters of the United States within or directly affecting waters designated by the State of North Carolina as Outstanding Resource Waters or High Quality Waters, including wetlands adjacent to these waters, are not authorized by this nationwide permit.

#### **H. NWP #33 – Temporary Construction, Access and Dewatering**

1) The required restoration plan must include a timetable for restoration activities.

2) Adverse impacts to Submerged Aquatic Vegetation (SAV) are not authorized by this nationwide permit.

#### **I. NWP #35 – Maintenance Dredging of Existing Basins**

1) No excavation of special aquatic sites, such as submerged aquatic vegetation (SAV) areas and wetlands, is permitted.

#### **J. NWP #36 – Boat Ramps**

1) Boat ramps will not extend farther than twenty (20) feet waterward from the mean high water (MHW) elevation contour in tidal areas or from the normal water level elevation contour in nontidal areas.

2) Placement of boat ramps in tidal or Section 10 waters that support submerged aquatic vegetation (SAV) may result in propeller damage and re-suspension of sediments that can reduce light penetration and photosynthesis. Therefore boat ramps will not be sited over areas of

submerged aquatic vegetation, or sited in areas where boating activities may result in either direct or indirect disturbance or loss of SAV beds. Applicants are encouraged to contact the NCDCM, NCDMF or the NMFS for assistance in determining the presence of SAV.

#### **K. NWP # 39 - Commercial, and Institutional Developments**

- 1) Discharges in wetlands and in perennial streams for stormwater management facilities are prohibited under this NWP.
- 2) Recreational facilities, if they are incorporated into and serving an entire commercial or institutional development, can be authorized by this NWP.
- 3) Discharges of dredged or fill material into waters of the US, including wetlands, within the mapped 100-year floodplain or floodway, below headwaters (i.e.  $\geq$  five cfs) resulting in permanent above-grade fills are not authorized by this nationwide permit.
- 4) Discharges of dredged or fill material into waters of the US, including wetlands, within the floodway, above headwaters (i.e.  $<$  five cfs) resulting in permanent above-grade fills are not authorized by this nationwide permit.
- 5) Discharges of dredged or fill material into waters of the United States within or directly affecting waters designated by the State of North Carolina as Outstanding Resource Waters or High Quality Waters, including wetlands adjacent to these waters, are not authorized by this nationwide permit.

#### **L. NWP # 40 - Agricultural Activities**

- 1) This nationwide permit does not apply to channelized streams.
- 2) Discharges of dredged or fill material into waters of the US, including wetlands, within the mapped 100-year floodplain and flood way, below headwaters (i.e.  $\geq$  five cfs) resulting in permanent above-grade fills are not authorized by this nationwide permit.
- 3) Discharges of dredged or fill material into waters of the US, including wetlands, within the floodway, above headwaters (i.e.  $<$  five cfs) resulting in permanent above-grade fills are not authorized by this nationwide permit.
- 4) Discharges of dredged or fill material into waters of the United States within or directly affecting waters designated by the State of North Carolina as Outstanding Resource Waters or High Quality Waters, including wetlands adjacent to these waters, are not authorized by this nationwide permit.

#### **M. NWP # 41 - Reshaping Existing Drainage Ditches.**

- 1) This NWP applies only to activities ordered by the State of North Carolina or a local



government in response to noncompliance with the State's erosion and sedimentation control requirements, or as ordered by the United States Environmental Protection Agency or Corps of Engineers in response to noncompliance with any provision of the Clean Water Act.

- 2) Proponents must take all appropriate measures to avoid modifying the reach and circulation of waters within wetlands adjacent to the reshaped ditch.
- 3) This nationwide permit does not apply to channelized streams.

#### **N. NWP # 42 – Recreational Facilities.**

- 1) Discharges of dredged or fill material into waters of the US, including wetlands, within the mapped 100-year floodplain and floodway, below headwaters (i.e.  $\geq$  five cfs) resulting in permanent above-grade fills are not authorized by this nationwide permit.
- 2) Discharges of dredged or fill material into waters of the US, including wetlands, within the floodway, above headwaters (i.e.  $<$  five cfs) resulting in permanent above-grade fills are not authorized by this nationwide permit.
- 3) Discharges of dredged or fill material into waters of the United States within or directly affecting waters designated by the State of North Carolina as Outstanding Resource Waters or High Quality Waters, including wetlands adjacent to these waters, are not authorized by this nationwide permit.

#### **O. NWP # 43 - Stormwater Management Facilities**

- 1) Discharges into wetlands and in perennial streams for stormwater management facilities are prohibited under this NWP.
- 2) Discharges of dredged or fill material into waters of the US, including wetlands, within the mapped 100-year floodplain or floodway, below headwaters (i.e.  $\geq$  five cfs) resulting in permanent above-grade fills are not authorized by this nationwide permit.
- 3) Discharges of dredged or fill material into waters of the US, including wetlands, within the floodway, above headwaters (i.e.  $<$  five cfs) resulting in permanent above-grade fills are not authorized by this nationwide permit.
- 4) Discharges of dredged or fill material into waters of the United States within or directly affecting waters designated by the State of North Carolina as Outstanding Resource Waters or High Quality Waters, including wetlands adjacent to these waters, are not authorized by this nationwide permit.

#### **P. NWP # 44 - Mining Activities**

- 1) Discharges of dredged or fill material into waters of the US, including wetlands, within the mapped 100-year floodplain and floodway, below headwaters (i.e.  $\geq$  five cfs) resulting in permanent above-grade fills are not authorized by this nationwide permit.

2) Discharges of dredged or fill material into waters of the US, including wetlands, within the floodway, above headwaters (i.e. < five cfs) resulting in permanent above-grade fills are not authorized by this nationwide permit.

**Q. NWP-B Discharges into Ditches and Canals:**

- 1) The applicant must comply with general condition 27 and receive authorization from the US Army Corps of Engineers before beginning work.
- 2) This nationwide permit cannot be used to remove Section 404 of the Clean Water Act jurisdiction upstream of the project site by severing the hydrologic connection.

**R. NWP-C Office of Pipeline Safety Designated Time Sensitive Repairs**

- 1) Pipeline/utility line repair, rehabilitation, or replacement through jurisdictional waters and wetlands will be accomplished utilizing directional drilling/boring methods to the maximum extent practicable.
- 2) Temporary discharge of excavated or fill material into wetlands and waters of the United States will be for the absolute minimum period of time necessary to accomplish the work. Temporary discharges will be fully contained with appropriate erosion control or containment methods or otherwise such fills will consist of non-erodible materials.
- 3) The area of waters of the United States to be disturbed will be limited to the minimum necessary to repair, rehabilitate, or replace the utility line. The work area authorized by this permit, including permanent fills, will be minimized to the greatest extent practicable.
- 4) In areas where the repair, rehabilitation, or replacement involves a sub-aqueous utility line across a Federally maintained channel, (i.e., the Atlantic Intracoastal Waterway [AIWW]), the line will be buried at least six (6) feet below the depth of the authorized channel. For areas outside Federally-maintained channels, sub-aqueous lines must be installed at a minimum depth of two (2) feet below the substrate when such lines might interfere with navigation.
- 5) Cleared wetland areas shall be re-vegetated to the maximum extent practicable with native species of canopy, shrub, and herbaceous species. Fescue grass shall not be used.
- 6) Use of rip-rap or any other engineered structures to stabilize a stream bed should be avoided to the maximum extent possible.

**S. NWP-D Commercial Shellfish Aquaculture Activities.**

1. This NWP does not authorize any activity which impacts Submerged Aquatic Vegetation.
2. This NWP does not authorize the discharge of any earthen fill material into any waters of the United States.

